

**SENT VIA EMAIL**

March 21, 2013

Vera Todorov  
President  
Association of Legal Professionals (ALP)  
c/o City Attorney's Office  
200 E. Santa Clara Street  
San Jose, CA 95113

**RE: City Proposals on Outstanding Issues Regarding Memorandum of Agreement for Fiscal Year 2012-2013**

Dear Vera:

As you know, both the City and ALP have been working tirelessly over finalizing the first Memorandum of Agreement (MOA) between the City and ALP. Through twenty-one (21) negotiation sessions dating back to May 2012, both parties have exchanged numerous proposals on language to be contained in the MOA and have come to what appears to be mutual agreement on a great number of these items as delineated in the City's proposed package Tentative Agreement dated March 15, 2013, which incorporates items previously agreed to on January 14, 2013, and language on other items previously proposed by ALP.

Though ALP has not yet signed the proposed Tentative Agreement dated March 15, 2013, based on our prior discussions, we believe we are in agreement on these issues, and that the remaining outstanding issues are limited to:

- Language related to "Agreement Conditions," specifically regarding the "Retiree Healthcare Reopener" and "Concerted Activity."
- ALP's proposal related to placeholder language about "Cost of Living" increases, which includes proposed "me-too" language.
- Language related to the status quo on "Retiree Healthcare."

- Language related to the status quo on "Health Insurance" and "Dental Insurance."
- Language related to "Telecommuting" (or, alternatively, "Alternative Work Schedules").

In anticipation of our meeting tomorrow, March 22, 2013, please find enclosed the City's proposed language regarding "Agreement Conditions" and "Telecommuting."

- Agreement Conditions

Regarding "Agreement Conditions," the City accepts the language proposed by ALP on the "Retiree Healthcare Reopener" dated March 13, 2013, which removed the list of issues which may be negotiated under this reopener from the City's proposed language on March 12, 2013. The enclosed proposal includes ALP's proposed language which, per our discussion on March 13th, may still include those issues spelled out in the City's March 12th proposal. Please note, however, that the enclosed proposal includes the caveat that issues to be bargained related to Retiree Healthcare are those that are mandatory subjects of bargaining.

In addition, the City accepts the language proposed by ALP on "Concerted Activity," including the removal of the language related to "Picketing" in Section 4.3.2 as well as the language proposed by ALP on March 15, 2013, regarding what is expected of ALP under this section. Please note, however, that the City's proposal removes the limitation proposed by ALP regarding the form of the written notice.

- Telecommuting

Regarding the issue of "Telecommuting," or alternatively, "Alternative Work Schedules," please note that there are existing City policies which address these issues. Nonetheless, please find attached the City's proposed side letter on "Telecommuting" which we believe address our understanding of ALP's interests regarding this issue.

Regarding the remaining issues, please see below:

- Retiree Healthcare

Regarding "Retiree Healthcare," the City's prior proposal on this issue on March 12, 2013, merely provided language on the status quo regarding the *funding* of these benefits. Given that negotiations Retiree Healthcare are ongoing, we believe this language describing the status quo is sufficient for this MOA which would be set to expire at the end of the current fiscal year.

- Health Insurance and Dental Insurance

With regards to the language on "Health Insurance" and "Dental Insurance," the City has previously proposed language we believe reflects the status quo regarding these issues on March 12, 2013, and does not anticipate offering any additional proposals regarding this language.

As far as the remaining matter being proposed by ALP, the City looks forward to reviewing any proposal ALP may have related to any "Cost of Living" language.

We are hopeful that the enclosed proposals on these issues will bring the parties closer to an agreement on a full MOA. As stated above, we believe the proposals made by the City reflect our understanding of the discussions we have had during our numerous negotiation sessions.

We look forward to discussing these further during our meeting tomorrow, March 22, 2013.

Sincerely,



Marco Mercado  
Senior Executive Analyst

c: Jennifer Schembri, Deputy Director of Employee Relations  
City Negotiation Team  
ALP Negotiation Team

Enclosure

**4. AGREEMENT CONDITIONS**

**4.1 Full Understanding, Modification and Waiver**

**4.1.1** This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

**4.1.2** Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

**4.1.3 Retiree Healthcare Reopener.** Notwithstanding any other provision of this Agreement, the parties agree to continue to meet and confer over all issues related to retiree healthcare benefits and funding that are mandatory subjects of bargaining upon the request of either party.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

**4.1.4 Measure B Reopener.** Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party that any action referenced in the previous paragraph has occurred. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

- 4.2** Separability. Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.
- 4.3** Concerted Activity It is understood and agreed that:
- 4.3.1** No lockout of employees represented by the Association shall be instituted by the City during the term of this Agreement.
- 4.3.2** Participation by any employee represented by the Association in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.
- 4.3.3** If the Association, its officers or its authorized representatives violate subsection 4.3.2 above or tolerate the violation of provision 4.3.2 above and after notice to responsible officers or business representatives of the Association has been provided by the City, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in subsection 4.3.2 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Association shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Association and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Association, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit.
- 4.3.3.1** The Association complies with its obligations under this provision if, by 5:00 p.m. of the business day following receipt of the written notice provided by the City, the Association sends, or causes to be sent, to the Association member(s) allegedly violating Section 4.3.2 a written notice that:

- Identifies the alleged conduct in which the Association member(s) is/are engaged in violation of Section 4.3.2 of this Agreement; and
- Provides the Association member(s) with the language of Section 4.3.2; and
- States that the Association does not authorize any conduct violating Section 4.3.2; and
- States that the Association member(s) must comply with Section 4.3.2 and must immediately cease any violation of Section 4.3.2.

#### **4.4**   Non-Discrimination

**4.4.1** The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability, pregnancy, actual or perceived gender identity and political affiliation.

**4.4.2** The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Union, or because of any authorized activity on behalf of the Union.

## Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE ASSOCIATION OF LEGAL PROFESSIONALS  
(ALP)

**CITY ATTORNEY'S OFFICE**  
**LABOR MANAGEMENT COMMITTEE**

Representatives of the City Attorney's Office management team will meet with representatives of the Association for the purposes of discussing telecommuting and alternative work schedules for employees represented by the Association in the City Attorney's Office, in a Labor Management Committee (LMC). LMCs are not authorized to meet and confer, to create contractual obligations, to modify the Memorandum of Agreement, or to authorize any practice in conflict with existing contracts, rules, City policies, or the City Attorney's discretion.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR ALP:

Marco Mercado  
Office of Employee Relations

Date \_\_\_\_\_

Vera Todorov Date  
Association of Legal Professionals (ALP)

Date \_\_\_\_\_